Proposed Gallatin River Outstanding Resource Water Designation Scoping Report

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1.0 Introduction

The Montana Department of Environmental Quality (DEQ) opened the scoping period for the Gallatin Outstanding Resource Water (ORW) Designation Environmental Impact Statement (EIS) on November 25, 2005. On December 12, 2005, DEQ held a public meeting in Gallatin Gateway, Montana, at the Gallatin Gateway Community Center. The meeting was well-attended and several resource area representatives from DEQ and other state agencies were present to field comments from the public. Greg Hallsten, project manager for DEQ, moderated the meeting. Comments made at the meeting were collected and re-typed by DEQ, and sent to Garcia and Associates (GANDA) for inclusion in this report. Comments received via postal mail or e-mail were forwarded to GANDA. The scoping period closed on December 28, 2005.

Under the Montana Environmental Policy Act (MEPA), the intent of scoping is to solicit participation from the public and interested agencies regarding the direction, breadth, and extent of the analysis contained in an EIS. Comments are evaluated based on their content, relevance, and jurisdiction of DEQ and associated agencies. Public scoping comments may redirect the analysis or assist in development of alternatives.

This report summarizes comments received by DEQ during the Gallatin EIS scoping period. Each comment was classified as to the resource area addressed, and then forwarded to the appropriate specialist for assessment. Resource specialists read each comment, and responded with a brief analysis of how the EIS could address the comment. Some comments requested analysis beyond the scope of the EIS, outside of the jurisdiction of DEQ, or inconsistent with the legal framework associated with the ORW petitioning process. These comments are catalogued in this report, but no further analysis will be completed.

2.0 Analysis of Comments

Twenty-six individuals or entities submitted comments to DEQ, in addition to the many comments recorded at the December 12 scoping meeting, during the public scoping period. The majority of all comments were from individual citizens. Several commenters addressed more than one topic or resource area in their submittals. The comments from the December 12 meeting were collected anonymously, and it is impossible to determine how many individuals commented, or which issues each person commented on. Twelve of the individual comment letters received expressed support for the designation, but did not request specific direction or analyses in the EIS. These comments were duly noted, but no response was required. The remaining comment letters contained at least one substantive issue addressed in this report. We have separated the analysis into resource areas and addressed each substantive issue within these areas. No comments were received in the following resource areas: air quality, vegetation, and cultural resources; therefore, no further scoping analysis on these resource areas was necessary.

2.1 Socioeconomics

Several comments were made at the December 12 scoping meeting and at least six additional comment letters were received by DEQ on issues related to the economic effects or analysis that

should be examined in the EIS. Dr. John Loomis reviewed these comments, grouped them into substantive issues, and provided the following analysis. The comments generally fell into three areas: nonmarket value analysis, costs for the ORW designation, and effects on the local economy.

2.1.1 Comment Summary

Nonmarket Values

At least three commenters specifically mentioned that the EIS should address nonmarket values in general, or specific to water quality, fish, and wildlife. One commenter specifically mentioned non-use values as well. Most comments indicated that nonmarket values of water quality, fisheries, and wildlife, were important economic elements that should be addressed in the EIS, and that these benefits were important to include to balance cost analysis associated with ORW designation. Comments indicated these amenity values were partly the foundation of the local economy of the area. The local Trout Unlimited chapter (TU) recommended a survey of new residents to measure amenity values. One commenter noted the educational value of a healthy Gallatin River should be included in cost analysis.

Costs

Two commenters, including TU, asked that the costs associated with ORW designation be quantified. TU specifically asked that such costs be compared as a percentage of home construction costs. One commenter asked that the costs of not designating the reach as an ORW be examined in terms of degraded water quality.

Economic Effects on Local Economy

Three comments were received requesting that the effect of ORW designation on the local economy be evaluated. Other commenters asked for specific effects of the designations on sectors of the economy, such as construction, realtors, jobs, tax base, schools, etc. One commenter asked for a comparison of build-out with and without ORW designation, and the resulting effect of that difference on the local economy. One commenter pointed out existing economics models and studies for southwest Montana.

2.1.2 Issues Raised

Nonmarket Values

We will address nonmarket values of water quality and fisheries using existing literature values and surveys. The nonmarket value of fishing will be addressed using an existing, but old, study that provides results for the Gallatin River (Duffield, Loomis, and Brooks 1987).

However, there is no existing literature specific to the Gallatin River or to residents of the area regarding the nonmarket value of water quality. To complete such a Gallatin River and area resident specific analysis (as requested by one commenter) would require design, implementation, and analysis of a new survey. Within the current budget and time frame, such a survey cannot be done. Thus, completely addressing this issue with Gallatin River-specific values is not possible unless additional budget and study time are provided.

Further, unless our resources specialists can provide the linkages between water quality and wildlife populations, we do not foresee quantifying nonmarket values of wildlife associated with the ORW designation.

Existing studies of non-use values for water quality and/or fish and wildlife along the Gallatin River do not exist. An old study of non-use values for water quality in Flathead Lake and Flathead River is available and will be used to indicate the relative magnitude of values and the amount of non-use value attributable to option, existence, and bequest non-use values (Sutherland 1985).

Costs

We will list the categories of costs to landowner and developers once decisions are made by DEQ and GANDA specialists regarding whether ORW designation would involve changes to regulation of septic tanks, acceptable types of septics, and placement or development. Where possible we will develop, via interviews with builders, the range of the likely per unit costs (e.g., added cost per house). The full costs of ORW designation will not likely be quantified as this would require knowing how many units would be affected by these higher costs. Short of GANDA hiring an engineering firm to calculate these costs for a set of typical affected users (river front homes, river front businesses, etc.), we will not be able to quantify the total costs associated with ORW designation.

Economic Effects on Local Economy

Economic effects on the local economy will be described qualitatively in terms of likely sectors most or least affected. To fully address these effects quantitatively, particularly down to specific sectors of the economy, would require two elements: (a) sufficient quantification of the effect of ORW designation on build-out rates, type of development, etc. (we are not sure if Gallatin County or developers can provide such quantitative changes in number and type of units built); and (b) a regional economic model for the economy. While we have an economic profile of the existing local economies, there are no off-the-shelf regional economic models of the Big Sky and Gallatin County economies. A regional economic model for Gallatin County could be developed using the IMPLAN software and database, but this effort would be beyond the current scope of work and budget. If we could obtain differences in build-out rates or type of development with and without ORW designation, a quantitative analysis of the effects on jobs, and on specific sectors of the Gallatin County economy, could be provided. However, at present we do not expect to perform a quantitative regional economic analysis due to lack of time and funding to work with county planning officials and developers to quantify the level and type of economic activity in the study area with and without ORW designation. Further, the time to develop and ground truth a regional economic model of Gallatin County is precluded with the current budget and existing time frame for the EIS. We will rely on the Sonoran Institute's Economic Profile System (EPS) for Gallatin County, and possibly the West Yellowstone County Subdivision of Gallatin County EPSC file (Sonoran Institute 2005) We will be using the Montana Department of Commerce and U.S. Census Bureau of Economic Analysis, to supplement and/or update the EPS and EPSC 2000 data (U.S. Census Bureau 2000).

2.2 Land Use and Recreation

Several comments were recorded at the December 12 scoping meeting and at least four additional comment letters were received by DEQ on issues regarding the effects on land use or recreational use analyses that should be examined in the EIS. John Petrovsky reviewed these comments related to land use and recreation, grouped them into substantive issues, and provided the following analysis. The comments generally fell into three areas: effects on existing and future private land use, effects on existing and future public land use, and projected changes in recreational use due to ORW designation.

2.2.1 Comment Summary

Private Lands

Comments related to existing land use focused on residential development and the potential changes in DEQ approval of septic systems and other waste water treatment systems. Concern was expressed over the uncertainty related to possible restrictions or moratoria on new septic systems and on replacement or maintenance of existing septic systems. Concern was also expressed over potential increase in regulation of activities that generate non-point source pollution, such as logging, development, and mining. One comment requested that the EIS include both "conventional" community development (urban, suburban, rural, agricultural) and activities such as mining and logging.

Comments related to future land use and development requested that the EIS characterize and quantify lands along the river designated or zoned for development according to county land use classifications. One commenter asked that the EIS quantify lands that are undeveloped or "underdeveloped" (i.e., not developed to maximum intensity per county zoning), and that we report this build-out increment in acres and occupancy to better determine the impact of increased population along the river. Commenters also asked that the scope of analysis in the EIS include:

1. Build-out potential of Big Sky and the West Fork of the Gallatin River;
2. Consideration of planned mining or logging operations and mining patents/claims;
3. Impacts due to ORW-related restrictions on domestic waste water treatment systems (both central systems, such as Big Sky, and individual septic systems);
4. Impacts due to increased restrictions on other point source discharges;
5. Impacts due to ORW-related restrictions on and increased management of non-point sources (e.g., sediment, de-icing agents, agricultural chemicals, and others);
6. Impacts on agricultural irrigation;
7. Whether there will be increased set-back requirements from the river due to ORW designation;
8. Defined impacts on construction and maintenance of roads, especially Highway 191;
9. Defined impacts on use of rip rap in the river;
10. Address "takings" and property rights issues related to land use impacts and restrictions; and
11. Use of build-out/future use projections to characterize the No Action Alternative.

Public Lands

Approximately 85 percent of lands within the Gallatin River Canyon corridor are publicly owned, and the United States Forest Service (USFS) is the largest land owner. Comments on land use within public lands focused on current and future mining and logging operations and on maintenance of past operations. These could include abandoned mines that may be located several miles from the immediate river corridor, but have the potential to deliver sediment and other pollutants to the mainstem via a tributary.

Recreation

The Gallatin River Canyon corridor is a popular recreation site for several activities. Commenters asked that the EIS characterize and quantify existing and projected recreational uses of the river (e.g., comparative statistics over time on river usage such as commercial rafting, guided fishing, unguided fishing, and unguided kayaking). Concern was expressed regarding whether the ORW designation would result in restrictions on existing or future river shoreline access in general, fishing access, wildlife viewing, hiking, picnicking, camping, dog walking, mushroom hunting, commercially guided fishing and rafting, non-commercial boating activities, and use and sustainability of recreation sites. Commenters requested that the EIS consider the potential recreational benefits of an ORW designation (e.g., healthier fishery, better water quality than the No Action Alternative). One commenter noted the Montana Challenge, a Fish, Wildlife and Parks (FWP) project, and asked that the EIS review FWP's reports on this project.

2.2.2 Issues Raised

Land Use

The large majority of comments on land use (public and private lands, existing and planned uses) address concerns included in the scope of analysis planned for the EIS. Exceptions and caveats to this include:

Extent of analysis in tributaries and upstream/downstream of the ORW reach: We have not yet defined the extent of detailed inventory and analysis of land uses (the build-out increment) along the streams tributary to the ORW reach. It is currently our intent to look at the tributaries and determine if significant new development can be expected, especially within a few miles of the ORW reach. We will then decide how far up tributaries detailed analysis should proceed. The petition defines the extent of the ORW designation, and DEQ does not have authority to extend the ORW designation beyond the ORW reach. In any case, it is possible that analysis could switch from quantitative to qualitative as distance from the ORW reach increases and land use intensity diminishes.

Mining, logging, and other watershed major activities: We are not planning detailed quantitative analysis of these land uses, unless they are adjacent to the ORW reach or to major tributaries. Instead, the current study plan includes a general inventory of these uses, and a relatively programmatic, qualitative review of potential impacts (impacts defined as increased restrictions on point or non-point discharges).

Takings and property rights issues: The land use analysis will serve as the basis for addressing these concerns, but they are not a part of the land use scope of work. These issues may be addressed in the regulatory issues section of Chapter 2 of the EIS.

General perspectives on non-point source questions: The extent of reporting on land use restrictions that might be imposed due to the various types of non-point sources (e.g., sediment, de-icing compounds, agricultural chemicals, etc.) depends on how far the water quality analysis addresses these issues. To the degree and extent that these sources of pollution are addressed in the water quality analysis, consequent impacts on land use can be reported.

Recreation

All issues raised in comments on recreation are within the scope planned for the EIS, with the possible exception of comments regarding benefits of ORW designation. This perspective can be discussed, but only in a qualitative fashion.

2.3 Water Quality

Several comments were made at the December 12 scoping meeting and at least five additional comment letters were received by DEQ related to water quality issues on the Gallatin River, regulatory impacts due to the ORW designation, or analysis that should be examined in the EIS. Shane Bofto and Tom Osborne of HydroSolutions, Inc. reviewed the comments related to water quality, grouped them into substantive issues and provided the following analysis. Comments pertaining to water quality can be placed into six general categories: the analytical scope of the EIS, evaluations and definitions of point and non-point source discharges, questions regarding the geographic scope of the EIS, desire to see acceptable water treatment alternatives described in the EIS, concern over the effect of ORW designation on future water quality regulation, and the effect of the ongoing total maximum daily load (TMDL) process.

2.3.1 Comment Summary

There were approximately 29 comments and general issues related to water quality raised by five persons or organizations in the scoping process. People were generally curious about this "first ever" ORW designation, how the process will work, and the potential for ORW to affect existing water quality regulations.

Specifically, commenters wanted more information on the ORW and the EIS process including DEQ's definition of "point source" and "non-point source" and the effect of discharges resulting in "no measurable change" to tributaries. The public was also interested in how DEQ will delineate the hydroconnectivity area that may define where septic systems would undergo a more rigorous approval process.

The Gallatin County Planning Department noted that the Plans and Regulations from the county do not address water quality beyond septic system approvals and required setbacks.

Other commenters were interested in how water quality issues will be handled if the ORW designation is approved by the Legislature. They would like to know what acceptable alternatives for treatment might be available under the ORW, and how DEQ will handle

replacement sewer systems and expansion (grandfathering). Other commenters brought up the ongoing TMDL process and believed that the ORW should wait until TMDLs are completed on all six waterbodies within the Upper Gallatin TMDL Planning Area. One commenter brought up the nonsignificant activities exempted from nondegradation analysis and asked that these be detailed in the EIS. These activities include:

Agricultural chemicals
Drilling activities
Oil and gas production
Coal/uranium prospecting
Hazardous waste management facilities
Metallic and non-metallic mineral exploration without discharge to surface water
Diversion of water

Several comments were related to the scope and content of the EIS. Commenters asked that the effects of existing discharges on the ORW status be examined, and that the effects of non point source pollution be analyzed and projected into the future under all alternatives. One commenter requested full disclosure of how the No Action Alternative would degrade the mainstem over time be included in the EIS. Another commenter requested inclusion of an explanation as to how ORW designation will prevent water quality degradation.

A comprehensive assessment of cumulative impacts was requested, including the effect of ongoing TMDLs, impacts from authorized degradation combined with nonsignificant activities for ground water connected to surface water, and surface water.

2.3.2 Issues Raised

Scope of Analysis Related to Discharge

A clear definition of how non-point source discharges are addressed must be made. This task is on-going, with the assistance of DEQ.

Existing Discharge Impacts

Currently, there are two Montana Pollutant Discharge Elimination System (MPDES) permits issued for discharges in the proposed ORW area, an industrial storm water discharge for Kenyon-Noble Ready Mix and a wastewater discharge permit for the Big Sky County Water and Sewer District. The Big Sky County Water and Sewer District was issued an MPDES permit in 1999 with an allowed discharge of treated wastewater to the Gallatin River. To date, there has been no discharge via that permitted discharge point. The impacts of all permitted discharges should be completed as part of the No Action Alternative in the EIS.

Cumulative Effects

Analysis of cumulative effects is part of the EIS process under MEPA, and a defined analysis of discharge type and area of influence will affect the potential outcome of the evaluation.

Point and Non-Point Sources

The EIS will include an analysis and determination of which discharges would be subject to additional regulation under ORW designation.

Geographic Scope
How to treat tributaries to the Gallatin River is an ongoing concern that is being addressed in the evaluation of pollutant source contribution. The EIS will consider guidance from DEQ, EPA Region VIII's Antidegradation Implementation Guidance document, and the experience of other ORW projects in the United States. It is our understanding that the analysis of tributaries will be limited to the potential for a tributary mouth to constitute a point source discharge for any pollutant.

Acceptable Treatment Alternatives
Review of alternative wastewater treatment technologies will be part of the EIS along with the economic impact of the alternative selection.

Effect of Upstream Water Usage or Diversion
Upstream water use and diversions may affect river flow rates, and hence dilution and whether discharges meet the trigger value for parameters of concern (potential pollutants). Although the ORW designation does not specifically address water quantity, diversions may be analyzed from a "connected actions" perspective.

Effect of Ongoing TMDL Process
There are six waterbodies in the Upper Gallatin TMDL Planning Area; all are tributaries to the mainstem of the Gallatin River. In addition, the Gallatin River downstream of Spanish Creek is also listed as impaired and will require a TMDL study in the future. The TMDLs are scheduled for completion between 2008 and 2012. The ongoing TMDL study of the West Fork Gallatin River and other tributaries in the Gallatin River watershed will complement the EIS by providing current water quality data. The EIS will utilize TMDL information, and may have to make assumptions based on best available information regarding the limits on pollutants of concern ultimately achieved by TMDL implementation.

2.4 Fisheries and Aquatic Resources
Several comments were made at the December 12 scoping meeting and at least five additional comments were received by DEQ on issues related to potential effects on the Gallatin River fishery or aquatics-related analyses that should be examined in the EIS. Leanne Roulson reviewed the comments related to fisheries and aquatic resources, grouped them into substantive issues, and provided the following analysis. The comments generally fell into three areas: effects on the fishery, potential changes to angler populations and angler access, and use of aquatic organisms in the data review and assessment process.

2.4.1 Comment Summary
Comments related to fisheries and aquatic resources received at the December 12 scoping meeting were varied, but generally focused on the recreational fishery. Several commenters requested that the benefits to and effects on the fishery be assessed in the EIS. Two commenters expressed a desire to see an analysis of how the ORW might affect the food web in the Gallatin, including periphyton (algae) and aquatic macroinvertebrates. Another comment requested that the educational value of the ecology of the river be included in the EIS. One comment asked

about the federal status of arctic grayling (*Thymallus arcticus*), and how a change in its status might affect the ORW. Another commenter asked if the ORW would designate native species for the river. TU asked that state fisheries goals be incorporated into the analysis.

A commenter asked about the use of piscicides for native fish projects, and the Montana Chapter of the American Fisheries Society is on record requesting information on how the ORW designation might affect piscicide use (Clancy 2002). We will address this comment as well as other comments regarding short-term inputs to the river under the water quality section.

Several comments related to the recreational activities surrounding fishing will be addressed under the recreation and land use analysis. Some comments brought up the issue of potentially increased pressure on the fishery due to publicity, if the ORW designation is accepted and implemented. Another commenter asked if fishing access sites would be required to get discharge permits under the ORW.

2.4.2 Issues Raised

Issues and Extent of Analysis

Our analysis will include a characterization of the current fishery within the proposed reach, as well as how the No Action and Proposed Action alternatives could affect the fishery. We anticipate that data on macroinvertebrate and periphyton populations may be available to supplement our assessment of the overall health of the river's ecology. If these data are available, we will use them to extend our analysis to other levels of the Gallatin River's food web. However, we are unable to require DEQ to undertake additional ecological studies (including systematic macroinvertebrate sampling) as requested by one commenter. It is our understanding that macroinvertebrate sampling has been ongoing in the Gallatin River, and we hope to use the results of these studies to add depth to our ecological analyses.

Geographic Extent of Analysis

Comments made regarding assessment of tributary habitat and water quantity in relation to the Gallatin River fishery point out the interconnectedness of the river's ecology. However, the legal framework of the ORW designation process and direction under MEPA limits the extent of our analysis to the reach of river that has been petitioned. Although water quantity is integral to fish health, it is not specifically addressed in the ORW legislation.

Regarding the comment on evaluating spawning habitat in tributaries, some analysis of incoming water quality and quantity from tributaries may be included to assess the ability of fish to use the tributaries for spawning, but a ranking or evaluation of spawning habitat within individual tributaries cannot be included in the EIS, nor will it be necessary to fully describe the effects on the fishery under each of the alternatives.

Species-Specific Concerns

The status of arctic grayling would not affect the ORW designation. If the grayling does become listed under the Endangered Species Act, ORW designation would not affect management of this or any other fish species within the river. ORW designation would not make any determinations as to which species are native to the Gallatin River. We will consult with U.S. Fish and Wildlife

Service and the FWP on fisheries data and management and their assessment of the current fishery in the Gallatin River.

Fisheries-related issues raised that are outside of the scope of the EIS included: the ability of the ORW to protect in-stream flows, effects of the change in Department of Natural Resources and Conservation (DNRC) permitting language for ponds, request for an analysis of trout reproduction in many of the tributary streams, and questions regarding possible protection of spawning habitat in tributary streams as a result of ORW designation.

2.5 Wildlife

There were four comments that mentioned wildlife; two were in the "socioeconomic" section of December 12 scoping meeting notes, and two were comments sent directly to DEQ. Pam Spinelli reviewed the wildlife comments, grouped them into substantive issues, and provided the following analysis.

2.5.1 Comment Summary

Two of the comments requested that nonmarket values of wildlife be considered in the EIS analysis.

One comment simply said "*bird-watching.*" Since it was listed under socioeconomics in the scoping meeting minutes, we assumed this comment was related to addressing nonmarket values of wildlife.

The last comment stated, "*Extrapolation based on known changes in wildlife patterns due to increased usage of and within high-water levels, 100 feet, 500 feet and incremental distances from the center of the river. Included should be special references to endangered species.*"

2.5.2 Issues Raised

Issues regarding nonmarket resource values in general will be addressed by the economist on the project, Dr. John Loomis. As the proposed action focuses on a change in water quality regulation, nonmarket wildlife values are not a substantive issue. They may briefly be mentioned, but will not be analyzed in depth.

Assessing changes in wildlife patterns based on proximity to the center of the river will not be analyzed as this will not be affected by the proposed action.

The petition's potential effects on endangered species will be addressed. We will consult with the U.S. Fish and Wildlife Service and will look at known range, occurrence, and habitat for endangered species in the area of influence.

2.6 MEPA Process

Several comments were made at the December 12 scoping meeting and at least seven additional comments were received by DEQ on issues related to MEPA or implementation of the ORW designation. Ken Wallace and Leanne Roulson reviewed the comments related to MEPA and the

ORW process, grouped them into substantive issues. and provided the following analysis. The comments were diverse, but several issues came up repeatedly: scope of the analysis, public involvement, tiering with other environmental documents, and the timeline and funding of the EIS.

2.6.1 Comment Summary

MEPA Process

Several commenters expressed a desire that the EIS be conducted with open disclosure and full public process. One commenter expressed a desire for a confidentiality agreement signed by DEQ and its contractor to prevent any disclosure of information until the EIS is completed. Comments were made related to the timeline and budget set up for the EIS. Some commenters felt that neither was adequate for a complete assessment. Others felt that the timeline had been imposed without good cause or substantiation.

Alternatives and Analyses

Commenters asked that the potential effects of full build-out of Big Sky be incorporated in the analysis. A desire was expressed for the EIS to look at several alternatives in addition to the No Action and Proposed Action alternatives. One commenter asked that the likelihood of the Gallatin River being degraded to B-1 standards, if no ORW designation is made, be fully disclosed.

Commenters expressed concern over DEQ including the tributaries in the analysis. One commenter believes that if one tributary is included, then all should be included. Somewhat connected to these comments were directions that the TMDL process be included in the analysis and comments that the ORW EIS cannot be completed until the TMDLs within the upper Gallatin River watershed are completed.

2.6.2 Issues Raised

MEPA Process

MEPA fully supports open public disclosure and, in fact, requires public participation in an EIS; therefore, we will follow MEPA guidance on public meetings and hearings, and welcome public comment throughout the process. A confidentiality agreement that restricts access to information would violate the state's open records policy and might also violate open records laws.

The deadline noted for this EIS was the outcome of establishing a schedule for completion that meets the timeframes required under MEPA (see 75-1-208(4)(a), Montana Code Annotated (MCA)). The budget may constrain the extent of some analyses, but does not automatically preclude adequate analysis. We are predominantly working with existing reports and have found few areas where data are lacking in quantity or quality. Therefore, the existing budget may prevent extraneous studies and focus the EIS.

Alternatives and Analyses

The trends in water quality changes over time don't necessarily matter to the EIS analysis, as we would establish current conditions and future worst-case conditions in our alternatives analyses.

All of the incremental changes getting to future worst case conditions are somewhat superfluous, as those changes would occur under approved permits or within allowable regulatory framework. Incorporating the potential outcomes of the TMDL process into the EIS can be used to assess these two timelines and levels of water quality change over time.

3.0 Comments Evaluated and Dismissed

Although every comment received was read and assessed as part of the public involvement phase of this EIS, some comments were outside of the scope work of the EIS analysis. Many of these comments have been addressed earlier in this document. This section calls out additional comments that will not be addressed in the EIS.

Several comments were made regarding increasing or reducing the geographic extent of the ORW designation. The ORW reach is defined by the initial petition, and DEQ does not have the authority to change the extent of the ORW designation (75-5-316(3)(c)(i), MCA) (American Wildlands 2001). Another comment requested that the EIS profile several other waters that might be eligible for ORW status. While this would be an interesting pursuit, it is not relevant to evaluating the effects of designating the Gallatin River as an ORW. Finally, several commenters requested that water quantity and effects of development on in-stream flows be analyzed. While water quantity does have some bearing on the concentration of pollutants within a water body, the ORW does not address water quantity as part of water quality; therefore, an independent analysis of water quantity would be beyond the scope of this EIS.

Some commenters listed several specific materials used in various industries that would need to be evaluated as potential point sources. While any discharge into the waters of the state may be subject to a point source permitting evaluation via the MPDES program, individual chemicals and materials used on a job site (including for maintenance) are considered potential non-point sources. Except in the incidence of accidental spills, these materials do not reach the river via any sort of conveyance, which is part of the definition of a point source (75-5-103(24), MCA). Therefore, we will qualitatively assess the potential for such materials to affect the water quality of the river, but their use would not be controlled differently under the ORW designation.

Two commenters expressed concern over the DEQ's choice of contractor for the EIS and a perceived potential for a conflict of interest. The Legislative Audit Division reviewed the selection process and found that no conflict of interest exists between the contractor, Garcia and Associates, and the possible outcome of the ORW petition. Another comment stated erroneously that the owner of Garcia and Associates was a proponent in the original petition. On page 8 of the petition, Mr. Mike Garcia, principal owner of Northern Lights Trading Company in Bozeman, Montana, is quoted from a 1997 publication that detailed his opinions on some of the values of the Gallatin River (American Wildlands 2001; Forrest 1997). However, Mr. Mike Garcia is not now, nor has he ever been connected to the firm of Garcia and Associates or its principal, Mr. John Garcia. Therefore this comment is irrelevant to the EIS.

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